



## PROBLEM-SOLVING COURTS PRACTICE GUIDELINES Drug Courts and 501(c)(3) Corporations

### I. Establishing a 501(c)(3) Corporation

It is permissible for a drug court to form a 501(c)(3) corporation for the express purpose of financially supporting drug court activities:

Drug courts may apply for and receive “gifts, bequests, and donations from private sources” to supplement the court’s budget. See IC 12-23-14.5-11(1).

The incorporation process must be conducted in accordance with all applicable laws, rules and regulations. It is recommended that any court considering forming a non-profit corporation seek the advice of an attorney with expertise in this practice area to handle the incorporation process as well as all legal activities thereafter.

Any court establishing a 501(c)(3) corporation should carefully consider the purpose or purposes for which the corporation will serve. Please note that concerns may arise regarding the use of court time to support corporation activities not directly related to the official functions of the drug court, i.e. a court staff member engaging in fundraising activities on court time in which the proceeds may be distributed to non-governmental entities.

### II. Drug Court Employees Serving as Members of the 501(c)(3) Corporation

It is recommended that the membership of the corporation include, to the greatest extent possible, community representatives that are not drug court staff. The number of members should be large enough to account for instances in which one or more members may need to excuse themselves from certain corporation activities to avoid a conflict of interest.

Generally, it is permissible for the drug court judge and drug court staff to serve as members of the 501(c)(3) corporation. However, as with any other activity associated with government employment, neither the judge nor the drug court staff is permitted to personally benefit from membership in the corporation. The drug court judge and staff remain representatives of the court while engaging in corporation member duties and activities.

Some drug court staff and other drug court team members such as, prosecutors, public defenders, treatment providers, probation officers, etc. may be subject to differing rules of professional conduct and must consider the applicable governing authorities when determining whether or not to serve as a corporation member.

It should be noted that there may be times when engaging in corporation activities may create a conflict of interest for one or more drug court staff or team members or the judge who serve as corporation members. If such a situation arises, each of the affected members is required to refrain from engaging in any activity which results in or has the potential to result in a conflict of interest.

### III. Fundraising Activities

Drug court judges may engage in fundraising activities consistent with the Code of Judicial Conduct, Canon 4.

The Indiana Commission on Judicial Conduct issued Advisory Opinion #01-96, interpreting Canon 4C(3)(b) stating that a judge "shall not personally participate in the solicitation of funds or other fundraising activities" and "shall not use or permit the use of the prestige of judicial office for fundraising or membership solicitation". Canon 4C(3)(b)(i); Canon 4C(3)(b)(iv), Code of Judicial Conduct.

This opinion advises that a judge may not personally engage in direct solicitation activities, including attending a fundraising event as the guest of honor, to avoid casting reasonable doubt on the judge's impartiality, perceived coercion or exploitation of the judicial office.

If the drug court staff is subject to the Code of Judicial Conduct by operation of local court policy, then the above-referenced opinion would apply to the drug court staff as well. As noted above, some drug court staff and drug court team members may be subject to differing rules of professional conduct and must assess the appropriateness of engaging in any corporation duties or activities in light of the appropriate governing authorities.

The prohibitions on certain fundraising activities reinforce the need to draw corporation membership from the local community without over-reliance on drug court staff. The drug court judge and staff, as well as other team members, need to continually assess their corporation member activities to avoid potential violations of the Code of Judicial Conduct, conditions of employment or other applicable rules and regulations.